



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2022-0107; FRL-9426-01-R9]

Air Plan Approval; Arizona; Maricopa County; Power Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Maricopa County Air Quality Department's (MCAQD or County) portion of the Arizona State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_x) and particulate matter (PM) from power plants. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action. Elsewhere in this ***Federal Register***, we are making an interim final determination to defer CAA sanctions associated with our previous disapproval action concerning the County's revision of this local rule.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE ***FEDERAL REGISTER***].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0107 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the

primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3073 or by email at gong.kevin@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. The State’s Submittal

A. What rule did the State submit?

The Arizona Department of Environmental Quality (ADEQ) submitted MCAQD Rule 322 “Power Plant Operations” as amended on June 23, 2021, and submitted to the EPA on June 24, 2021. On September 25, 2021, the EPA determined that the submittal for MCAQD Rule 322 met the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

We approved a previous version of Rule 322 (locally revised on October 17, 2007) into the Arizona SIP on October 14, 2009 (74 FR 52693). The County adopted revisions to the SIP-approved version on November 2, 2016, and ADEQ submitted them to us on June 22, 2017. The EPA disapproved that revision in a final rule published on July 20, 2020 (85 FR 43692). If we take final action to approve the June 23, 2021 version of Rule 322, this version will replace the previously approved version of this rule in the SIP.

C. *What is the purpose of Rule 322?*

Emissions of NO_x contribute to the production of ground-level ozone, smog and PM, which harm human health and the environment. Emissions of PM, including PM equal to or less than 2.5 microns in diameter (PM_{2.5}) and PM equal to or less than 10 microns in diameter (PM₁₀), contribute to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires states to submit regulations that control NO_x and PM emissions. Rule 322 regulates equipment at power plants that emit these and other pollutants. The EPA's technical support document (TSD) has more information about this rule.

II. The EPA's Evaluation and Action

A. *How is the EPA evaluating the rule?*

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require reasonably available control technology (RACT) for each major source of NO_x in ozone nonattainment areas classified as Moderate or above (see CAA sections 182(b)(2) and 182(f)). The MCAQD regulates a portion of the Phoenix-Mesa

ozone nonattainment area which is classified as Moderate for the 2008 8-hour ozone national ambient air quality standard (40 CFR 81.303). Maricopa County's "Analysis of Reasonably Available Control Technology For The 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) State Implementation Plan (RACT SIP)," adopted December 5, 2016, submitted June 22, 2017 (the "2016 RACT SIP"), found that there were major sources of NO_x within the Maricopa County portion of the Phoenix-Mesa ozone nonattainment area subject to Rule 322. Accordingly, this rule must establish RACT levels of control for applicable major sources of NO_x.

The EPA's previous rulemaking on the 2017 version of Rule 322 found several deficiencies that did not allow for approval of that revision into the Arizona SIP. These deficiencies (described further in our 2019 TSD for that rule) include the following:

- a. Air Pollution Control Officer discretion to approve alternative control strategies as RACT without further approval from the EPA.
- b. NO_x emission limits for steam generating units used for electricity generation that were less stringent than RACT.
- c. Overly broad exemptions from certain requirements during emergency fuel use operations.
- d. Air Pollution Control Officer discretion to extend compliance deadlines for applicable units.
- e. Absence of a compliance determination requirement, such as a regular stack testing requirement.

As a result of these deficiencies, the EPA finalized disapproval of the 2017 revision to Rule 322, which initiated offset sanctions to commence 18 months after the effective date of that rulemaking (August 19, 2020), highway sanctions to commence 24 months after the effective date, and a requirement to promulgate a Federal Implementation Plan (FIP) to commence 24 months after the effective date, under CAA sections 110(k)(3) and 301(a). If MCAQD revises

Rule 322 to resolve the identified deficiencies and EPA approves the revision into the Arizona SIP, these sanctions and FIP clocks will be stopped.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
2. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).
3. “Alternative Control Techniques Document—NO_x Emissions from Stationary Gas Turbines,” EPA 453/R-93-007, January 1993.
4. “Alternative Control Techniques Document—NO_x Emissions from Industrial, Commercial & Institutional Boilers,” EPA 453/R-94-022, March 1994.
5. “Alternative Control Techniques Document—NO_x Emissions from Stationary Reciprocating Internal Combustion Engines,” EPA 453/R-93-032, July 1993.
6. “De Minimis Values for NO_x RACT,” Memorandum from G. T. Helms, Group Leader, Ozone Policy and Strategies Group, U.S. EPA, January 1, 1995.
7. “Cost-Effective Nitrogen Oxides (NO_x) Reasonably Available Control Technology (RACT),” Memorandum from D. Ken Berry, Acting Director, Air Quality Management Division, US. EPA, March 16, 1994.

B. *Does Rule 322 meet the evaluation criteria?*

We believe that this revision to Rule 322 meets CAA requirements, and addresses the deficiencies we identified in our 2020 rulemaking. The MCAQD corrected the first deficiency (discretion for alternative control strategies without EPA approval) by amending the provisions allowing for this deviation from the RACT requirements to include the EPA’s approval of any such alternatives into the SIP. The County also clarified that the only equipment currently

seeking to use an alternative control strategy were doing so under a low use requirement restricting annual operations to 10 percent of their annual capacity, expressed as fuel input limits. We have evaluated the analysis supporting this approach and agree that units operating under the low use threshold would not find RACT to be cost effective (see our TSD for further discussion). Therefore, we find that this revision resolves this deficiency.

The MCAQD corrected the second deficiency by including in the rule new NO_x emission limits of 30 parts per million by volume (ppmv) NO_x for gaseous fuel fired operations and 40 ppmv NO_x for liquid fuel fired operations at new units. Existing steam generating boilers must limit NO_x emissions to 0.1 pounds per million British thermal units per hour. We believe these emission limits to constitute RACT for this source category, and we find that these revisions resolve the deficiency.

The deficiency for emergency fuel operations (unbounded length, and ambiguity for testing operations) was corrected by the MCAQD through two revisions. The first is an annual limit of 168 hours for emergency fuel fired operations. The second is a clarification of the exemption for emergency fuel testing operations to be limited only to the period needed for testing. We find that these revisions resolve the deficiency for emergency fuel operations in Rule 322.

The fourth deficiency (unbounded discretion for extending compliance deadlines) was resolved by removing the discretion of the Control Officer to extend the increments of progress, and therefore the compliance schedule. Operators of applicable non-compliant equipment must now submit a permit revision to the MCAQD within 18 months of becoming subject to the rule, and be fully compliant within 36 months of issuance of the final permit. We find that this revision resolves the deficiency for compliance deadlines in Rule 322.

The fifth deficiency, lack of compliance determination requirements for NO_x emissions, was resolved by specifying that performance tests must be conducted annually. Units that are equipped with continuous emission monitoring systems are not required to conduct performance

tests, but must maintain and and test the CEMS in accordance with the applicable EPA regulations in 40 CFR part 60 and 40 CFR part 75. We find that this revision resolves the deficiency for compliance determination requirements in Rule 322.

The revision is otherwise consistent with relevant guidance regarding enforceability, RACT, and SIP revisions. The TSD has more information on our evaluation.

C. Public comment and proposed action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted Rule 322 because it fulfills all relevant requirements. We will accept comments from the public on this proposal until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. If we take final action to approve the submitted rule, our final action will incorporate this local rule into the federally enforceable SIP and stop the sanctions and FIP clocks that are associated with our previous disapproval of Rule 322.

III. Incorporation by Reference

In this proposed rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference MCAQD Rule 322, “Power Plant Operations” as amended on June 23, 2021. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely

proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In

those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Particulate matter, Reporting and recordkeeping requirements.

(Authority: 42 U.S.C. 7401 *et seq.*)

Dated: February 1, 2022.

Martha Guzman Aceves,

Regional Administrator,

Region IX.

[FR Doc. 2022-02462 Filed: 2/7/2022 8:45 am; Publication Date: 2/8/2022]